It would seem that since there is a trespass upon plaintiff's legal right to have the natural fall of the stream undisturbed, the violators of this right should not be allowed to set up their own detriment in defense. And this is the view taken by the Courts. *Whalen* v. *Paper Co.*, 208 N. Y. 1, 101 N. E. 805; *Evans* v. *Reading, etc., Fertilizing Co., supra.*

The defendant by adverse user may acquire a permanent right to flood the plaintiff's land. *Whitehair* v. *Brown*, 80 Kan. 297, 102 Pac. 783. While the plaintiff by continued suits could protect his rights, the jurisdiction of equity to remove the cloud on the plaintiff's title seems clear. See 1 VA. L. REV. 246.

WILLS—CONTRACT TO DEVISE—QUANTUM OF EVIDENCE.—A husband and his wife executed mutual wills, but the husband later disposed of his property by a different will. Devisees under the first will sought to establish a contract for the execution of the mutual wills, and prayed specific performance thereof. *Held,* the evidence being unconvincing, specific performance will not be decreed. *Wanger* v. *Marr* (Mo.), 165 S. W. 1027.

In cases where specific performance is prayed, evidence of the existence of the contract alleged must be clear and convincing. *Rockecharlie* v. *Rockecharlie* (Va.), 29 S. E. 825; *Melville* v. *Waring*, 159 Mo. App. 395, 141 S. W. 12. And its terms must be certain and definite. *Fielder* v. *Warner*, 78 Ark. 158, 95 S. W. 452. *A fortiori* convincing evidence is required in the case of contracts to dispose of property by will. Some of the courts have gone so far as to say that the contract must be established beyond a reasonable doubt, although perhaps in none of the cases was there actual necessity for such emphatic language. *Russel* v. *Sharp*, 192 Mo. 270, 91 S. W. 134, 111 Am. St. Rep. 496. The mere execution of mutual wills is not per se evidence that they were based on a contract. *Edson* v. *Parsons*, 155 N. Y. 555, 50 N. E. 265.

The Statute of Frauds was not applied in the instant case. Yet it is well settled that parole agreements to devise are within its purview. *Gould* v. *Mansfield*, 103 Mass. 408, 4 Am. Rep. 573; *Hale* v. *Hale*, 90 Va. 728, 19 S. E. 739; 20 CYC. 235. Furthermore, the actual execution of mutual wills, in pursuance of a contract, does not furnish a sufficient memorandum in writing to satisfy the statute, unless the contract is expressly mentioned in the will. *Hale* v. *Hale*, 90 Va. 728, 19 S. E. 739; *Gould* v. *Mansfield*, 103 Mass. 408, 4 Am. Rep. 573. Nor is the actual execution of his will by one of the parties to such an agreement sufficient part performance to satisfy the statute.

WILLS—CONVERSION—EQUITABLE CONVERSION OF REALTY INTO PERSONALTY BY WILL.—A testator died leaving his property, real and personal, to his wife, and on her death certain sums of money to his sons and other beneficiaries. Before the death of the wife, the plaintiff, a creditor of one of the sons, obtained judgment on his claim and levied upon the interest of the son in the real estate. At the sale the plaintiff bought such interest. *Held,* on the death of the testator there was

an equitable conversion of the realty into personalty, and as the son possessed no realty the levy and sale are void. *Greenman* v. *McVey* (Minn.), 147 N. W. 812.

The weight of authority sustains this view. *Appeal of Emery*, 83 Conn. 235, 76 Atl. 529; *Beaver* v. *Ross*, 140 Iowa 154, 118 N. W. 287, 20 L. R. A. (N. S.) 65. The same rule obtains in the Federal Courts. *Ramsey* v. *Hanlon*, 33 Fed. 425. The maxim "Equity considers that as done which ought to be done," is the basis of this doctrine. *Haward* v. *Peavy*, 128 Ill. 430. But there is authority *contra* that the conversion takes place only at the time of the actual sale. *Sayles* v. *Best*, 140 N. Y. 368, 35 N. E. 636; *Williams* v. *Lobban*, 206 Mo. 399, 104 S. W. 58. It follows that where such equitable conversion occurs the realty will devolve as personalty and the personal representative take rather than the heirs. *Elliott* v. *Fisher*, 12 Sim. 505. A good distinction is drawn in cases where the sale is contingent, as where land was devised to three sons with the condition that at the time the youngest reached his majority the land was to be sold and the proceeds distributed among them, it was held that there would be no sale unless the youngest reached his majority and the realty retained its character as such until an actual sale. *Elliott* v. *Loflin*, 160 N. C. 361, 76 S. E. 236. The criterion is the intention of the testator. See *Greenman* v. *McVey, supra; Elliott* v. *Loflin, supra.*

WILLS—EXECUTION—ATTESTATION.—A testator asked witness to attest his will but on account of the way it was folded his signature could not be seen. *Held*, the will was not duly attested. *Nunn* v. *Ehlert* (Mass.), 106 N. E. 163. See NOTES, p. 228.

WILLS—LEGACIES CONDITIONED ON OBTAINING DIVORCE OR SEPARATION.—A legacy to the testator's son was conditioned upon the death of the son's wife or his divorce or separation from her, and provided for a forfeiture of the legacy if the son should, after such separation, return to her. *Held*, such condition is not void as against public policy. *Daboll* v. *Moon* (Conn.), 91 Atl. 646.

The law does not favor divorces, but they are granted when such seems to accord better with the interests of society than to preserve the integrity of the marriage. *Dennis* v. *Dennis*, 68 Conn. 186, 36 Atl. 34, 57 Am. St. Rep. 95, 34 L. R. A. 449. As a general rule, contracts and provisions tending to induce a husband and wife to live separate or to obtain a divorce are void as against public policy. *Blank* v. *Nohl*, 112 Mo. 159, 20 S. W. 477, 18 L. R. A. 350. But the validity of a legacy conditioned upon divorce or separation depends upon the intention of the testator. *Coe* v. *Hill*, 201 Mass. 15, 86 N. E. 949; *Snorgrass* v. *Thomas* (Mo. App.), 150 S. W. 106. If his purpose was to provide for the legatee in case she was deprived of the support of her husband, *Dusbiber* v. *Melville* (Mich.), 146 N. W. 208, or to put the property out of the reach of the husband and his creditors, *Ellis* v. *Birkhead*, 30 Tex. Civ. App. 529, 71 S. W. 31, the condition is valid. But if the manifest intention of the testator was to bring about a separation or divorce, or to prevent a